



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

OCT 21 2016

VIA CERTIFIED MAIL:
RETURN RECEIPT REQUESTED

9540 NFB, LLC, and 9524 Niagara Falls Boulevard, LLC
574 Young St.
Tonawanda, New York 14150

Attn: Leonard Pimm

Re: Request for Information Pursuant to Section 104 of CERCLA
Niagara Falls Boulevard Site, Niagara Falls, Niagara County, New York

Dear Mr. Pimm:

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threatened release of hazardous substances, pollutants, and contaminants into the environment and with enforcement under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9601-9675 (also known as the "Superfund" law). For your information, a copy of the Superfund law may be found at www.epa.gov/superfund/action/law/index.htm.

EPA has reason to believe that you are the Chief Executive Officer of 9524 Niagara Falls Boulevard, LLC, and 9540 NFB, LLC, the former of which owns the parcel located at 9524 Niagara Falls Boulevard, Niagara Falls, New York ("9524 NFB"), and the latter of which owns the parcel located at 9540 Niagara Falls Boulevard, Niagara Falls, New York. These two parcels are included in the Niagara Falls Boulevard Site (the "Site"), which is known by EPA to be contaminated with radioactive material. This letter seeks your cooperation in providing information and documents related to the Site. EPA encourages you to give this letter your immediate attention. A complete and truthful response should be provided to the attached Request for Information **within 30** days of your receipt of this letter.

EPA has documented the release and/or threatened release of hazardous substances into the environment at the Site. In December 2013, EPA collected soil and slag samples that confirmed the presence of elevated gamma radiation at the Site. The concentration of radionuclides found in the slag and soil samples were significantly higher than background conditions. From July 2015 to August 2015, EPA conducted a further radiological assessment of the interior and exterior of structures and soils at the Site. EPA analyzed the data collected from this assessment and determined that a time-critical CERCLA removal action was necessary. The removal action

was initiated on June 1, 2016, and is currently ongoing.

EPA has broad information-gathering authority that allows it to require persons to provide information or documents relating to the materials generated, treated, stored, or disposed of at or transported from a facility, the nature or extent of a release or threatened release of a hazardous substance, pollutant, or contaminant at or from a facility, and the ability of a person to pay for or perform a cleanup.

While EPA seeks your cooperation in this investigation, compliance with this Request for Information is required by law. When you have prepared a response to the Request for Information, please sign and have notarized the enclosed "Certification of Answers to Request for Information," and return that Certification to EPA along with your response. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law. In addition, Section 104 of CERCLA authorizes EPA to pursue penalties for failure to comply with a Request for Information.

Some of the information that EPA is requesting may be considered by you to be confidential. Please be aware that you may not withhold the information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures described in the Instructions that follow this letter, including the requirements for supporting your claim for confidentiality.

Please note that if after submitting your response you obtain additional or different information concerning the matters addressed by this Request for Information, it is necessary that you promptly supplement your response as described in the Instructions.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501.

See the enclosed Instructions for information on how to respond to the enclosed questions and/or information requests. Your response to this Request for Information should be mailed and/or electronically sent to:

Eric Daly
Response and Prevention Branch
U.S. Environmental Protection Agency, Region II
2890 Woodbridge Avenue, Bldg 205 (MS-211)
Edison, New Jersey 08837
Daly.Eric@epa.gov

A copy of your reply should be sent to:

Margo Ludmer, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, New York 10007
Ludmer.Margo@epa.gov

Please give the matters addressed in this letter your immediate attention. If you have any questions regarding this Request for Information, or would like to discuss this matter with EPA, please contact Mr. Daly at (732) 321-4350. Inquiries from attorneys should be addressed to Ms. Ludmer at (212) 637-3187.

We appreciate and look forward to your prompt response to this Information Request.

Sincerely,



Nicoletta DiForte, Deputy Director of Enforcement
Emergency and Remedial Response Division

Enclosures

INSTRUCTIONS FOR RESPONDING TO REQUEST FOR INFORMATION

1. A complete and separate response should be given for each question and/or information request. If information or documents responsive to this Request for Information are not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Identify each answer with the number of the question and/or information request and the subpart to which it responds. For each document produced in response to this Request for Information, indicate on the document, or in some other reasonable manner, the question to which it applies.
3. Provide responses to the best of your ability, even if the information sought was never put down in writing or if the written documents are no longer available. Consult with all present and past employees and agents of your company whom you have reason to believe may be familiar with the matter to which the question pertains.
4. In answering each question, identify each individual and any other source of information (including documents) that were consulted in the preparation of the response to the question.
5. Whenever this Request for Information requests the identification of a natural person, or other entity, the person or entity's full name and present or last known address should also be provided.
6. If you have reason to believe that an individual other than one employed by your company may be able to provide additional details or documentation in response to any question, state that person's name, last known address, phone number, and the reasons for that belief.
7. If you cannot provide a precise answer to a question, please approximate, but in any such instance, state the reason for your inability to be specific.
8. If a document is requested, but not available, state the reason for its unavailability. To the best of your ability, identify the document by author, date, subject matter, and number of pages, and identify all recipients of the document with their last known addresses and phone numbers.
9. If anything is omitted from a document produced in response to the Request for Information, state the reason for, and the subject matter of, the omission.
10. If additional information or documents responsive to this Request become known or available to you after you respond to this Request, EPA hereby requests pursuant to

Section 104(e) of CERCLA that you supplement your response to EPA within **30 calendar days** from the date such information or documents became available to you.

11. **Confidential Information:** The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering all or part of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. § 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim is confidential, you must separately address the following points:

- a. the portions of the information alleged to be entitled to confidential treatment;
- b. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- c. measures taken by you to guard against an unintended disclosure of the information to others;
- d. the extent to which the information has been disclosed to others and the precautions taken in connection therewith;
- e. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determination, if available, or a reference to them; and
- f. whether you assert that disclosure of the information would likely result in substantial harmful effects to your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your responses so that all non-confidential information, including any redacted versions of documents, are in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information, that you intend to continue to do so, and that the information is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by Section 104(e) of CERCLA and 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice.

B. DEFINITIONS

1. The term “9524 NFB LLC” shall mean 9524 Niagara Falls Boulevard, LLC, and its predecessors, successors, subsidiaries, divisions, branches, officers, managers, employees, contractors, trustees, partners, assigns, or agents.
2. The term “9540 NFB LLC” shall mean 9540 NFB, LLC, and its predecessors, successors, subsidiaries, divisions, branches, officers, managers, employees, contractors, trustees, partners, assigns, or agents.
3. The term “9524 Property” shall mean the real property located at 9524 Niagara Falls Boulevard, Niagara County, Niagara Falls, New York 14304.
4. The term “9540 Property” shall mean the real property located at 9540 Niagara Falls Boulevard, Niagara County, Niagara Falls, New York 14304.
5. The term “document” or “documents” shall mean any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies.
6. The term “hazardous substances” shall have the same definition as that contained in Section 101(14) of CERCLA.
7. The term “identify” means, with respect to a natural person, to set forth the person’s name, present or last known employer and business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, occupation, position, or business. With respect to a corporation, partnership, business trust, or other association or business entity (including a sole proprietorship), the term “identify” means to provide the entity’s full name, address, and a brief description of its business.
8. The term “material” or “materials” shall mean any and all objects, goods, substances, or matter of any kind, including but not limited to wastes.
9. The term “person” shall include any individual, firm, unincorporated association, partnership, corporation, trust, non-profit organization, or other entity.
10. The term “Site” shall mean the property located at 9540 Niagara Falls Boulevard, Niagara Falls, Niagara County, New York and 9524 Niagara Falls Boulevard, Niagara Falls, Niagara County, New York.
11. The term “you,” “your Company,” or “the Company” shall mean 9524 NFB LLC, 9540 NFB LLC, or both.

12. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, slag, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including but not limited to containers for temporary or permanent holding of such wastes.
13. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA or the Resource Conservation and Recovery Act ("RCRA"), in which case the statutory definitions shall apply.

REQUEST FOR INFORMATION

1. Please answer the following questions for both 9524 NFB LLC and 9540 NFB LLC:
 - a. State the correct legal name and mailing address for each Company.
 - b. State the name and address of the president or the chairman of the board and/or other presiding officers of each Company.
 - c. Identify the state and date of incorporation of each Company and each Company's agent for service of process in the state of incorporation and in New York.
 - d. If each Company is a subsidiary or affiliate of another company, or has subsidiaries, or is a successor to another company, identify these related entities and describe their relationship to each Company.
 - e. Indicate whether either Company has been the subject of or is otherwise involved in a bankruptcy filing under the United States Bankruptcy Code, 11 U.S.C. §§ 101-1330. If not, state whether either Company anticipates filing a petition under the Bankruptcy Code within the next six months.
2. Indicate whether 9524 NFB LLC or 9540 NFB LLC ever operated at the Site or any portions thereof, either solely or as a partnership. If so, provide a detailed description of the operations, processes, or business activities either Company conducted at the Site.
3. Indicate whether companies other than 9524 NFB LLC and 9540 NFB LLC currently operate at the Site or any portions thereof. Please identify any such operators and the date the operators began operations at the Site. Briefly describe the operations, processes, or business activities of these companies.
4. State when and from whom 9524 NFB LLC purchased the 9524 Property. If there were any businesses operating on the real property at the time it was acquired, please identify them.
5. State when and from whom 9540 NFB LLC purchased the 9540 Property. If there were any businesses operating on the real property at the time it was acquired, please identify them.
6. If known by your Company, indicate the names of any prior owners and operators of the 9524 Property and the dates of their ownership and/or operation.

7. If known by your Company, indicate the names of any prior owners and operators of the 9540 Property and the dates of their ownership and/or operation.
8. Please indicate whether, to your knowledge, there were any operations at the Site by prior owner(s)/operator(s) involving the use of radioactive materials. If so, describe in detail what those prior operations were and when they occurred.
9. Provide all information of which you are aware regarding the disposal of radioactive slag at the Site, including but not limited to when the disposal of such material took place, the source of the material, and the entity(ies) involved in the generation, handling, storage, transportation, or disposal of the material. Provide knowledge, information, and/or documents relating to contracts, agreements, or permits between any persons involved in any activities associated with the placement of radioactive slag material at the Site.
10. Identify all individuals and entities that/who may have information or documents relating to the generation, handling, storage, transportation, or disposal of the radioactive slag that came to be located at the Site.
11. Provide any knowledge, information, and/or documents related to the construction of the parking areas at the Site, which is believed by EPA to have occurred in the early 1960s. In your response, if known, please identify all persons and/or entities involved in the construction of the parking areas at the Site and indicate the source of the fill material used for the construction of the parking areas.
12. Provide any knowledge, information, and/or documents related to any current or prior operations involving earth-moving activities around the parking area at the Site.
13. Provide any knowledge, information, and/or documents related to the Probe International investigation of radioactive contamination at 9524 NFB, which commenced in 1979 at the request of the Consolidated Bowling Corporation.
14. If your Company performed a Phase 1 Environmental Site Assessment ("Phase 1 assessment") at either property at the Site prior to your ownership, please provide the details of the Phase 1 assessment and provide a copy. If you are aware of any other Phase 1 assessments that have occurred at the Site in the past, provide the details of those other assessments and provide copies, if available.
15. Indicate whether you have ever conducted an assessment, investigation, or cleanup of hazardous substances or wastes at the Site. If yes, identify all environmental contractors and consultants hired to perform the work, describe the activities they conducted at the Site, and indicate the date(s) that the activities took place. Provide copies of all letters, reports, and conclusions issued by the contractors and consultants regarding the Site,

including the names of the wastes that were disposed of and the location of disposal.

16. Please answer the following questions concerning the involvement of State and local authorities at the Site:
 - a. Describe any and all communications that you have had with State and/or local authorities concerning the radioactive material at the Site;
 - b. Describe in detail any and all response work performed at the Site by a State or local agency concerning the parking lot and/or the radioactive material at the Site. Please include in your description any removal activities that may have been performed by New York State in 2008 or 2009.
 - c. Indicate whether any state or local agency ever transported, disposed of, and/or stored construction debris or radioactive material at the Site. If so, please describe where and the manner in which the debris/material was transported, disposed of, and/or stored.
17. Identify all individuals with knowledge of facts relating to the responses provided to this Request for Information. Identify each individual who assisted or was consulted or who answered on behalf of the Company in the preparation of its response to this Request for Information, and specify the question with which each person assisted in responding.
18. Please provide any additional information or documents that may help EPA identify parties that may have been a source of, or otherwise been responsible for, the radioactive material that came to be located at the Site.

NIAGARA FALLS BOULEVARD
CERTIFICATION OF ANSWERS TO REQUEST FOR INFORMATION

State of _____:

County of _____:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that I am under a continuing obligation to supplement my response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or my response thereto should become known or available to me.

NAME (print or type)

TITLE (print or type)

SIGNATURE

Sworn to before me this
day of _____, 2016

Notary Public

